Supreme Court, U.S.
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No. 70-85

IN THE

Supreme Court Of The United States

October Term, 1971

PAUL M. BRANZBURG, PETITIONER

v.

JOHN P. HAYES, JUDGE

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE COMMONWEALTH OF KENTUCKY

BRIEF FOR THE RESPONDENT, JOHN P. HAYES, JUDGE

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INDEX

	PAGE
Summary of Argument	1–2
Argument	2–4
Conclusion	4

CITATIONS

Cases:

Riley v. *Lee*, 88 Ky. 603, 11 S.W. 713 (1889) 2

Constitution and statutes:

Constitution of the United States:
First Amendment 2
Fifth Amendment 3

Kentucky Revised Statutes 421.100 3

Miscellaneous:

8 Wigmore, Evidence, Sec. 2286 (McNaughton Rev. 1961) 2

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SUMMARY OF ARGUMENT

Petitioner, a newspaper reporter, refused to answer questions propounded before a Grand Jury of Jefferson County, Kentucky, claiming a privilege not to answer pursuant to the provisions of Kentucky Revised Statutes, Sec. 421.100. The Statute provides that a newpaper reporter "shall not be compelled to disclose . . . the source of any information procured or obtained by him." The questions asked Petitioner related to his witnessing an alleged violation of the narcotic laws of the Commonwealth of Kentucky, KRS Chap. 218.

Petitioner had witnessed the possession and compounding of narcotic drugs by persons he admittedly can name and identify. He wrote a newspaper story about what he witnessed and had a photographer take pictures of the law violation to convince any doubters of the truth of what he witnessed and wrote. The trial Court and the Court of Appeals of Kentucky ruled Petitioner should answer the questions.

ARGUMENT

COMPELLING JOURNALIST WHO WITNESSED A CRIME TO TESTIFY DOES NOT VIOLATE THE FIRST AMENDMENT SINCE THERE IS NO REPORTER'S PRIVILEGE AS A MATTER OF RIGHT.

The First Amendment of the United States Constitution, applicable to the States by the 14th Amendment, says "Congress shall make no law . . . abridging the freedom of speech or the press." Sec. 8 of the Constitution of Kentucky also provides for freedom of speech and press. The highest court of Kentucky has said the provision means that the press has "the same rights and immunities that are enjoyed by the public at large . . . but no more." Riley v. Lee, 88 Ky. 603, 11 S.W. 713 (1889).

A confidential communication between a journalist and an informant was not privileged from disclosure at common law. No pledge of privacy nor oath of secrecy can avail against a demand for the truth in a court of justice. 8 Wigmore, Evidence Sec. 2286. (McNaughton Rev. 1961.) The only privilege rec-

ognized by the Constitution of the United States is the privilege against self-incrimination. (Fifth Amendment.)

The Commonwealth of Kentucky recognized that there was no reporter's privilege from disclosing confidential communications and enacted KRS 421.100 thereby establishing a new privilege.

> "421.100 (1649d-1) Newspaper, radio or television broadcasting station personnel need not disclose source of information.
>
> "No person shall be compelled to disclose in any legal proceedings or trial before any court, or before any grand or petit jury, or before the presiding officer of any tribunal, or his agent or agents, or before the General Assembly, or any committee thereof, or before any city or county legislative body, or any committee thereof, or elsewhere, the source of any information procured or obtained by him, and published in a newspaper or by a radio or television broadcasting station by which he is engaged or employed, or with which he is connected. (1952 c 121. Eff. 6-19-52)"

The Commonwealth of Kentucky has made no law abridging freedom of the press in violation of the First Amendment of the Constitution of the United States. On the contrary, it has implemented and extended the freedom of the press by the enactment of KRS 421.100.

The Court below told Petitioner he need not reveal under KRS 421.100, supra, the source of his informa-

tion, but that what he actually witnessed he must reveal the same as any other citizen who witnesses the commission of a crime. Compelling Petitioner to testify *as a witness* to the commission of a crime he saw, had photographed and wrote about in his employers' newspaper, in no way violates his rights under the First Amendment of the Constitution of the United States.

CONCLUSION

For the reason stated the Judgment of the Court of Appeals for the Commonwealth of Kentucky in No. 70-85 should be affirmed inasmuch as there has been no showing of a violation of a First Amendment right.

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Dated: September 23, 1971

No. 70-85

Brief, amicus curiae, for American Newspaper Publishers Assoc. filed Oct. 12, 1971. Vide: 70-57 and 70-94. ~~See 70-57.~~